

EXAMINER'S COMMENT

Election/Restrictions

1. The constructive non-election by original presentation of claims 3, 6-14, 16, 18-21 and 24-29 in the action mailed January 6, 2009 has been withdrawn per the petition decision mailed March 18, 2010. Claims 3, 6-14, 16, 18-21 and 24-29 have thus been examined on the merits herein.

Allowed Claims

2. Claims 3, 5-16, 18-21 and 23-29 are allowed.

REASONS FOR ALLOWANCE

3. The following is an examiner's statement of reasons for allowance:

a. The outstanding rejection of claims 3, 5-16, 18-21 and 23-29 under 35 U.S.C. 112 was overcome by arguments and a claim amendment as noted in the non-final action mailed January 6, 2009.

b. Also, upon further review of applicant's arguments filed October 21, 2008, the arguments are sufficient to overcome the rejection of claims 5, 15 and 23 under 35 U.S.C. 103 and thus that rejection is withdrawn. As these were the sole remaining rejections on the merits of the claims and over the closest prior art of record, claims 3, 5-16, 18-21 and 23-29 are allowed. Specifically, though the examiner stands by the position that there is a design need to size and place the elastics such that they conform to the shape and size of the user. However, upon further consideration, the examiner agrees with the applicant's argument that because Jitoue makes no explicit mention of

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the unstretched state of the elastics applied to the chassis in the stretched state, it would not be obvious to one of ordinary skill in the art to specifically modify the auxiliary elastic member to arrive at the claimed relationship, i.e. a length of said auxiliary members that is substantially equal to a width of the absorbent structure in the waist-surrounding direction, wherein "substantially" is clearly and quantitatively defined in applicant's specification. (see Page 9, line 23 – Page 10, line 6)

2. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Melanie J Hand/
Primary Examiner, Art Unit 3761